IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5815 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL EDUCATION AND CHARITABLETRUST & 1 - Petitioners
Versus
MANJIT T NAIR & 1 - Respondents

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Appearance :

MR HJ NANAVATI for Petitioners : 1 - 2.
MR VH DESAI for Respondent: 1,
MR HASMUKH C PATEL for Respondent : 1,
MR UMANG H. OZA AGP for Respondent: 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 02/07/2007

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. The petitioners under Article 226 of the Constitution of India have challenged the judgment and order dated 5.7.1996 passed by the Gujarat Primary Education Tribunal (hereinafter referred to as 'the Tribunal' for short) on Application No. 220 of 1991 preferred by respondent No. 1 – applicant, declaring that the action of the petitioner preventing the respondent No. 1 from discharging her duties from 4.5.1991 was illegal and directing the present petitioner to reinstate the respondent No. 1 with effect from 4.5.1991 with back wages and other incidental benefits and petitioner was ordered to pay Rs.500=00 towards cost.

3. This Court (Coram: Miss R.M.Doshit, J.) vide order dated 7.4.1997 issued Rule and granted interim relief in terms of para 6(D).

4. Few facts deserve to be set out for appreciating the controversy involved in this matter.

5. The petitioner No. 1 is a Public Charitable Trust running Pre-primary School. The respondent No. 1 was working in Pre-primary School since 1986. The respondent No. 1 possessed educational qualification of M.A.-B.Ed. The respondent No. 1 was taking classes in K.G. and First standard. It is the say of the petitioner that in the academic year 1988-89, primary section was started in the School and one Meeraben Patel was

appointed as Primary Teacher in 2nd Standard and one Shailiben was appointed in Std. 1st. At that time, the present respondent No. 1 was working in KG-II, which is also known as Sr. K.G. Said Shailiben resigned in the beginning of the academic year 1990-91 and therefore, present respondent No. 1 was came be temporarily posted in primary section w.e.f. 6.6.1990. It is submitted by the petitioner that respondent No. 1 applied for the post of Primary Teacher in Gujarati Section pursuant to the advertisement, which was released by the petitioner School. The application was submitted on 16.5.1991 and interviews were held. It is submitted that respondent No. 1 -Teacher also called for interview before the Selection Committee and she was not selected. The English Medium Section was closed down by the petitioner Trust since 1992. It appears from the record that the respondent No. 1 approached the Tribunal on 19.8.1991 praying that School be restrained from obstructing the respondent No. 1 from performing the duty and sought declaration that over all termination of the respondent No. 2 was bad. Various contentions were raised by both the sides. Ultimately, the Tribunal passed an order dated 5.7.1996 declaring the so called termination of the respondent No. 1 with effect from 4.5.1991 to be bad and directed the petitioner to reinstate the respondent No. 1 with full back wages.

6. Shri Nanavati, learned counsel appearing for the petitioner has contended that petition deserves to be allowed and the order of the Tribunal deserves to be quashed and set aside as admittedly the respondent No. 1 did not possess the requisite qualification for being appointed as primary teacher. The Bombay Primary Education Rules, 1949 provides Schedule – F for providing for valid appointment, qualification and termination of primary teacher. Rule 6 provides qualification of valid appointment of primary teacher and Rule 13 provides termination of services of the teacher. The protection floating from Rule 13 of Schedule F is available only to the validly appointed primary teacher. In the instant case, as it is indicated by the Tribunal, no valid appointment order has been given to respondent No. 1 for her appointment even in English Section of the Primary School. Shri Nanavati has relied upon the decision of Division Bench of this Court in Letters Patent Appeal No. 374 of 1997 dated 3.8.2005. The Court while examining such controversy has elaborately dealt with this aspect and observed that untrained teacher not having qualifications for primary teacher cannot be covered by the protecting arm couched under Rule 13 Schedule F of the Rules and therefore, the protection given by the Tribunal was dehors the rules and

deserves to be quashed and set aside.

7. Shri Hasmukh Patel, learned counsel appearing for the respondent No. 1 has submitted that the respondent No. 1 has in fact, made out a case before the Tribunal that she in fact was working in the Primary School Section and therefore, the protection under Schedule F ought to have been given to her. Her not holding the requisite qualification is not under dispute. However, the fact remains that she had in fact been working in English Section of Primary School, she cannot be restrained from working as Primary Teacher and module of principle of natural justice was required to be observed and on that count, the order of the Tribunal deserves to be upheld and petition deserves to be dismissed.

8. This Court has perused the documents and heard the learned counsel of the parties at length. This Court is unable to agree with the submission of Shri Patel in light of the fact that respondent No. 1 had in fact never been appointed as valid Primary Teacher as it is clear from the record that she could not have been appointed for want of requisite qualification. It is admitted fact that respondent No. 1 did not possess the requisite qualification for her appointment as Primary Teacher. The decision of Division Bench rendered

in Letters Patent Appeal No. 374 of 1997 dated 3.8.2005 therefore, would squarely applicable in facts and circumstances of the present case also.

9. Rule 6 and 13 of the Schedule F of Bombay Primary Education Rules, 1949 deserves to be set out as under :

“ Rule 6 : **Qualification** : The management shall appoint only trained teachers who have passed the Secondary School Certificate Examination and also the primary training Certificate Examination. For special subjects, teachers shall be recruited in accordance with the qualifications laid down by the Government for such teacher under the vacancies in the District Educational Committees or Municipal School Boards in the State from time to time.

Rule 13 : Termination of Services of a Teacher:-

(1) The Management of a private school shall not terminate otherwise than as a measure of penalty the services of any permanent trained teaches without the previous permission of an Administrative Officer.

(2) A permanent trained teacher whose services are terminated with the permission of the Administrative Officer after three years of his service shall be entitled to a compensation.

(3) Equal to 6 months salary including allowances if the teachers have in service in the school for a period not exceeding five years, and

(b) equal to six month's salary including allowances for the first five years ad a month's salary for every year of the period exceeding five years, if the teacher has put in service in the school for a period exceeding five years :

Provided that total compensation payable under Clause (a) or (b) shall not exceed twelve months, salary including allowances:

Provided further that in the case of a teacher an Inquiry Committee shall be constituted consisting of the following persons, namely :-

(i)one representative of the management;

(ii)the Head Mater of the School; and

(iii)a representative of the concerned teacher;

and accordingly the formal inquiry against the teacher shall be held by the said committee instead of the management or an enquiry officer as if where the context so required for the words “the management” or “inquiry officer” the word “Enquiry Committee” has been substituted.”

Thus, from the aforesaid, it shows that the order of the Tribunal cannot be sustained. Order of the Tribunal therefore can be said to be

suffering from patent irregularities and the same was erroneous and it therefore can be said to have been passed without jurisdiction, it deserves to be quashed and set aside.

10. The petition therefore, deserves to be allowed and is accordingly allowed. The order of the Tribunal dated 5.7.1996 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no costs.

(S.R.BRAHMBHATT, J.)

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